

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I': NEW DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.667/Del/2019
(ASSESSMENT YEAR 2013-14)

M/s Wrigley India Private Limited 206, Okhla Industrial Estate, Phase III, New Delhi-110020 PAN-AAACW1789P (Appellant)	Vs.	DCIT, Circle-27(2), New Delhi. (Respondent)
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ITA No.702/Del/2019
(ASSESSMENT YEAR 2013-14)

Joint CIT (OSD), Circle-27(2), New Delhi (Appellant)	Vs.	M/s Wrigley India Private Limited, 206, Okhla Industrial Estate, Phase III, New Delhi-110020 PAN-AAACW1789P (Respondent)
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ITA No.1293/Del/2022
(ASSESSMENT YEAR 2014-15)

ITA No.1294/Del/2022
(ASSESSMENT YEAR 2015-16)

ITA No.1295/Del/2022
(ASSESSMENT YEAR 2016-17)

DCIT, Circle-25(1), New Delhi. (Appellant)	Vs.	M/s Wrigley India Private Limited, 206, Okhla Industrial Estate, Phase III, New Delhi-110020 PAN-AAACW1789P (Respondent)
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ITA No.952/Del/2022
(ASSESSMENT YEAR 2015-16)ITA No.953/Del/2022
(ASSESSMENT YEAR 2016-17)

M/s Wrigley India Private Limited 206, Okhla Industrial Estate, Phase III, New Delhi-110020 PAN-AAACW1789P	Vs.	Asst. CIT, Circle-27(2), Delhi.
(Appellant)		(Respondent)

Assessee by	Shri Ravi Sharma, Adv. Ms. Shruti Khimta, AR and Ms. Kashish Gupta, AR
Department by	Shri Dharm Veer Singh, CIT-DR
Date of Hearing	12/03/2025
Date of Pronouncement	29/05/2025

ORDER**PER MANISH AGARWAL, AM:**

All the four appeals for Ay 2013-14 to AY 2016-17 filed by the revenue are having common issues and thus they are taken together and disposed-off by a single order. Further the assessee has also filed an appeal for AY 2013-14, AY 2015-16 and AY 2016-17 which are also decided by this common order.

2. First, we take the cross appeals for AY 2013-14 in ITA Nos. 667/Del/2019 by assessee and ITA No. 702/Del/2019 by revenue for AY 2013-14.

3. These are cross appeals filed by the assessee as well as Revenue against the order of Ld. Commissioner of Income Tax (Appeals)-44, New Delhi in Appeal No.74/2018-19 CIT(A)-44 dated 31.10.2018 for Assessment Year 2013-14.

4. The assessee has challenged the appellate order on the strength of the following grounds of appeal:

"1. That on the facts and circumstances of the case and in law, the order passed by the Ll. Assessing Officer (Ld. AO)/ Ld. Transfer Pricing Officer (Ld. TPO)/ Ld. Commissioner of Income Tax (Appeals) (Ld. CIT (A)) under section 92CA (3)/143(3)/ section 250(6) of the Income-tax Act, 1961 (the Act) is bad in law.

2. That on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition in respect of international transaction of provision of contract Research and Development ('R&D') services by relying on the order passed by the Ld. TPO/Ld. AO under Section 92CA (3)/ 143(3) of the Act.

3. The Ld. CIT(A)/Ld. AO/Ld. TPO erred on facts and in law in holding that the international transaction pertaining to provision of contract R&D service does not satisfy the arm's length principle envisaged under the Act and in doing so have grossly erred by:

3.1. not appreciating that none of the conditions set out in section 92C(3) of the Act are satisfied in the instant case;

3.2. disregarding the Arm's Length Price ('ALP') as determined by the Appellant in the Transfer Pricing ('TP') documentation maintained by it in terms of section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ('the Rules');

3.3. distorting the economic and comparability analysis undertaken by the Appellant in the TP Study and conducting a fresh comparability analysis based on application of the erroneous additional / revised filters in determining the ALP and rejecting the filters applied by the Appellant in its TP Study;

3.4. disregarding multiple year/ prior years' data used by the Appellant in the TP Study and holding that current year (i.e. FY 2012-13) data for comparable companies should be used despite the fact that the same was not necessarily available to the Appellant at the time of preparing its TP Study;

3.5. including certain companies that are not comparable to the Appellant in terms of functions performed, assets employed and risks assumed;

3.6. excluding certain companies on arbitrary/ frivolous grounds even though they are comparable to the Appellant in terms of functions performed, assets employed and risks assumed;

3.7. without prejudice to the ground above, disregarding the fresh search conducted by the Appellant in line with the quantitative and qualitative filters proposed by the Ld. TPO;

3.8. denying working capital adjustment to the operating profit margins of the comparables, and in doing so have grossly erred in:

3.8.1. concluding that the Appellant has not been able to demonstrate that the difference in the working capital deployed is making a difference in the margin earned by the Appellant and the comparables;

3.9. denying the benefit of risk adjustment, despite principally accepting the requirement for the same, and erred in concluding that the Appellant has not been able to demonstrate how the difference in risk impacted the margins of the comparables and the Appellant.

4. That the above grounds of appeal are independent and without prejudice to each other."

5. Whereas the Revenue has also taken following grounds of appeal:

"(a) Whether in the facts and circumstances of the case of CITIA) was right in holding that AMP expense does not constitute an international transaction and hence it does not lead to the creation of marketing intangibles?"

(b) Whether in the facts and circumstances of the case the CIT(A) was right in law in stating that the existence of an international transaction cannot be arrived at from the clauses of an intercompany arrangement?

(c) Whether in the facts and circumstances of the case the CIT(A) was right in law in holding that the IT Act does not have machinery provision to benchmark the international transaction arising from AMP expenses?

(d) Whether in the facts and circumstances of the case the CIT(A) was right in law in rejecting the BLT to benchmark the AMP transaction?

(e) Whether in the facts and circumstances of the case the CIT(A) was right in law in observing that the benefit to the AE due to AMP expenditure is only incidental and not intentional?

(f) Whether in the facts and in law, the CIT(A) was right in law in observing that if on application of TNMM the transactions are found to be at arm's length then no adjustment is warranted ignoring the fact that a separate benchmarking of each international transaction is permitted as per IT Act and international guidance?

(g) Whether the order of Ld. CIT (A) is contrary to the provisions of explanation (i) (c) to Sec. 92B, which says that outstanding receivables are in nature of capital financing and is an international transaction."

(h) Whether the Id. CIT(A) has erred in considering 'Sequent Research Limited' as a valid comparable ignoring the fact that the assessee is providing R&D services for manufacturing & sale of confectionery items whereas 'Sequent Research Limited' is providing R&D services in the field of the animal health, pharmaceuticals and agri-business industries.

6. In assessee's appeal, the grounds of appeal are in relation to the confirmation of additions in respect of the international transaction of provisions of contract Research and Development ('R&D') services.

7. Brief facts of the case are that assessee is wholly owned subsidiary of Wm. Wrigley Jr. Co., USA ('WWJC') and is engaged in the manufacturing and selling of confectionery products like chewing gum, bubble gums, lollipops and toffees, catering both to the domestic and export market. The return of income was electronically filed on 29.11.2013 declaring loss at Rs.33,61,39,691/-. The case was selected for scrutiny and the AO observed that assessee has International Transaction during the year, therefore, a reference u/s 92CA was made of the Transfer Pricing Officer (TPO) for determination of Arm's Length Price for the international transactions entered by the assessee. The assessee has reported following international transactions as per audit report in Form 3CEB:

S. No.	Description of the transactions	Amount (Rs.)
1	Purchase of raw materials	6,28,12,444
2	Purchase of fixed assets	1,94,26,510
3	Sale of finished goods	21,60,05,154
4	Allocation of IT cost	8,82,28,754
5	R & D services provided	3,78,90,165
6	Interest on external commercial borrowings	5,80,81,718
7	Reimbursement of expenses (paid)	25,05,212
8	Reimbursement of expenses (received)	3,57,62,260

8. Thereafter, the TPO proceeded u/s 92C(2) of the Act and after considering the information and documents maintained by the assessee, TPO vide order dated 28.09. 2016 made the following adjustments:

Nature of Addition	Amount (in INR)
Adjustment on account of provision of contract Research and Development ('R&D') service	36,68,618
Adjustment on account of outstanding receivables	12,51,244
Adjustment on account of Advertising Marketing and Promotion ('AMP') expenses	3,49,67,677
Total	3,98,87,539

9. The AO after giving effect to the order of TPO in terms of order passed u/s 143(3) dated 10.02.2017 has made the additions of Rs.3,98,87,539/- in respect to the TP adjustments made by the TPO in the order passed u/s 93CA(3) of the Act and, accordingly, the income of the assessee was assessed at loss of Rs.29,62,52,125/-. Against this order, the assessee preferred an appeal before Ld. CIT(A) who vide impugned order dated 30.10.2018 allowed part relief to the assessee wherein the TP adjustments made on account of outstanding receivables and advertisement, marketing and promotion expenses (AMP) were deleted and adjustment on account of provisions of contract R&D services were upheld. The assessee is in appeal against the transfer pricing adjustment of Rs.36,68,618/- made by the TPO which were upheld by the Ld. CIT(A).

10. The assessee had entered into the agreement with Wm. Wrigley Jr. Co., USA ("WWJC") for research and development services on 01.01.2009. The WWJC engaged the assessee to conduct research, development, evaluation, planning and consulting activities and related business and technical activities on behalf

of and for the exclusive benefit of WWWJC or its delegates. As per the terms of the contract, the assessee is enumerated at a markup of 7% on costs for performing the R & D activity. During the year under appeal, assessee company was engaged in the R&D Centre in following activities:

- (a) Pouch packing for modern trade;
- (b) Dispenser packaging;
- (c) Tube packaging;
- (d) Flavors.

11. As per TP Study Report (TPSR), the assessee company has chosen Transaction Net Margin Method (TNMM) as the Most Appropriate Method (MAM) and used operative profit/ total costs as the PLI. The TPO has modified certain quantitative/qualitative filters applied by the assessee and further add certain additional filters and based on these changes made in filters, the TPO has rejected four out of Five comparable taken by assessee in its TPSR and further proposed two new comparable which are Syngene International Limited and Oxygen Bio Research Private Limited. In reply to the show cause notice by the TPO, the assessee proposed three additional comparable, however, TPO has rejected additional comparable proposed by the assessee and finally determined the arm's length price based on the set of three comparable and work out arm's length mean at 17.36% and proposed adjustment of Rs.36,68,618/-. In first appeal, the Ld. CIT(A) has partly accepted the contention of the assessee with respect to additional comparable proposed by the assessee and direct to include M/s Sequent Research Limited for final set of comparable. After giving effect to the order of Ld. CIT(A), arm's length mean was worked out at 16.36% by the TPO leading to the addition of Rs. 33,14,504/- with respect to provision of contract R&D services. Against such order of Ld. CIT(A), the assessee is in appeal before us.

12. Before us, in ground of appeal No. 3.1, assessee has contended that none of the conditions specified in section 92C(3) are satisfied. In ground of appeal No. 3.2 assessee has challenged the action of the ld. CIT(A)/AO/TPO in disregarding the TPSR maintained by the assessee without any basis. However, the main

contention of the assessee is in Ground of appeal No. 3.3 regarding conducting fresh comparability analysis by rejecting the filters applied by the assessee and substituting additional filters. Further the assessee contended that the comparables included by the TPO are not at all comparable to the appellant in terms of function performed, assets employed and risk assumed. During the course of hearing, the Id. AR emphasized that the TPO has included M/s Syngene International Limited which is functionally different company engaged in the drug discovery and development including discovery chemistry and biology services, process development, manufacture of advances intermediates etc., to pharmaceuticals and biotechnology companies worldwide, which is functionally dissimilar to the appellant's services. He further submitted that the company M/s Syngene International Limited is in manufacturing also, however in the annual report of the company for Financial Year 2012-13 segmental information was not available. For this, the Id. AR referred Note-35 to the financial accounts of the company which are available at paper book pages 215 to 230 wherein at page 229 under Note-35 titled as "segmental information" the business is segment stated as "the company is primarily engaged in a single business segment for providing contract research and manufacturing services."

13. Further, while defining the segment accounting policy, the company has recognized the Revenue on account of contract research and manufacturing services as under:

"In respect of contracts involving research services, in case of 'time and materials' contracts, contract research fee are recognised as services are rendered, in accordance with the terms of the contracts. Revenues relating to fixed price contracts are recognised based on the percentage of completion method determined based on efforts expended as a proportion to total estimated efforts.

In respect of contracts involving sale of compounds arising out of contract research services for which separate invoices are raised, revenue is recognised when the significant risks and rewards of ownership of the compounds have passed to the buyer, and comprise amounts invoiced for compounds sold.

The Company collects service tax on behalf of the government and, therefore, it is not an economic benefit flowing to the Company. Hence, it is excluded from revenue."

14. According to the Ld. AR from the perusal of the aforesaid information provided by the company, it is clear that the said company does not provide any segmental information, therefore, the company cannot be selected as comparable. He placed reliance on the judgment of the Co-ordinate Bench in the case of DCIT vs. Pioneer Overseas Corporation India Branch reported in [2018] 93 taxmann.com 274 (Delhi Tribunal) wherein the Co-ordinate Bench has rejected the company M/s M/s Syngene International Limited as a suitable comparable, on account of lack of availability of segmental information. The ld. AR further submitted that during the Financial Year 2012-13, M/s Syngene International Limited had issued share capital to GE Equity International Mauritius and further acquired 100% stock in Clinigene International Limited from Biocon Limited to ensure seamless operational integration. Thus, company M/s Syngene International Limited has registered abnormal growth and was not a good comparable. In the last, ld. AR stated that in assessee's own case for Assessment Year 2014-15, 2015-16 and 2016-17, ld. CIT(A) has accepted the assessee's plea of rejecting the company M/s Syngene International Limited as suitable comparable due to absence of segmental information though the company is having two cites of income i.e. income from contract research fees and sale of compound. He, therefore, requested that if the company M/s Syngene International Limited is excluded from list of comparable, resultant mean margin would be in its favour.

15. Per contra, the Ld. CIT-DR submit that the argument of the assessee were duly considered by the Ld. CIT(A) who had observed that the company M/s Syngene International Limited is fit as comparable since the appellant had failed to demonstrate how the issue of shares effected the profit margin. He further submitted that with regard to the non-availability of segmental information, the issue may be sent back to the AO /TPO for making necessary verification. He prayed accordingly.

16. We have heard the rival submissions and perused the materials available on record. The assessee in various grounds taken with respect to the adjustment in contract R&D Services has raised many issues which include the rejection of filters applied by the assessee by substituting certain more filters and thereafter inclusion of new comparable and rejection of the comparables taken by the assessee in its TPRS in terms their functions performed, assets employed and risk assumed. Main thrust of the arguments of the assessee was with regard to the inclusion of M/s Syngene International Limited as one of the comparable which is selected by the TPO for determination of the Arm's Length Price. It is evident from the financial statements of M/s Syngene International Limited as available in paper book, the company is mainly having two source of income (i) Contract Research and (ii) Manufacturing Services Income. However, in its financial statements, segment-wise breakup of Revenue was not provided. In absence of such break-up of Revenue and further in absence of the segmental data, the filter applied by the TPO i.e. service revenue more than 75% of the operating Revenue, cannot be ascertained nor could be satisfied and thus cannot be included in the set of comparables. The Co-ordinate Bench of ITAT, Delhi in the case of Pioneer Overseas Corporation India Branch reported in [2018] 93 taxmann.com 274 (Delhi-Trib.) rejected the company M/s Syngene International Limited as comparable on the ground of non-availability of segmental information, by making following observations:

“16. So far as rejection of Syngene International Limited as comparable is concerned, we find the Ld. CIT(A) while holding the same to be not comparable has observed that the said company is engaged in contract and research services in the field of synthetic chemistry, molecular biology and custom synthesis. We find the Mumbai 'K' Bench of the Tribunal in the case of My Evonik Degussa Jedin Private Limited (supra) vide order dated 21.11.2012 has observed as under:

“19. Insofar as Syngene International Ltd., this company is again 99% subsidiary of Biocon Ltd. and is engaged as a custom research service provider in the -79 drug development process from discovery to supply of development compounds. From annual report, it is seen that the company has two sets of income one from contract research fees and sale of compounds. However, in the absence of segmental information regarding contract research and manufacturing activities, it is difficult to analyse its main revenue and profit margin from the contract research work. Even otherwise also, apparently it is seen that its functional profile is different with that of the assessee company. Thus, going by the segmental data of Biocon

Lid. with regard to contract research segment, we do not find any merit in the inclusion of the said company by the TPO in the set of comparables for determining the ALP in the case of the assessee. Hence, this company is directed to be excluded from the set of comparables."

17. Since Syngene International Limited has two sets of income i.e. income from contract research fees and sale of compounds and since segmental details are not available, therefore, in absence of any contrary material brought to our notice, we do not find any infirmity in the order of the Id. CIT(A). Accordingly, the same is upheld and the grounds raised by the Revenue are dismissed."

17. Since, the company Syngene International Limited has two segment and segmental details are not available, therefore, Syngene International Limited cannot be included as a comparable and we accept the contention of the assessee and direct the AO/TPO to exclude the company from comparables and further direct the AO/TPO to re-compute the TP adjustment after excluding Syngene International Limited from the comparables. Since we have accepted the main contention of the assessee of excluding one of the comparable M/s Syngene International Limited the other sub-grounds taken in main ground of appeal No.3 are become academic and requires no adjudication. Accordingly, with the above directions the Grounds of Appeal No. 2 to 3.9 of the assessee are allowed.

18. In the result, the appeal of the assessee is allowed.

19. Now, coming to appeal of the Revenue in ITA No. 702/Del/2019.

20. In ground of appeal No. A to F, the Revenue has challenged the action of the Ld. CIT(A) in holding that AMP expenses does not constitute an international transaction and, hence, does not lead to creation of marketing intangibles. The Revenue further challenged the action of Ld. CIT(A) in rejecting the BLT to benchmark the AMP transaction.

21. The assessee company has not identified expenses on advertisement publicity, marketing and promotions expenses incurred during the year as international transaction, however, the TPO by observing that assessee has incurred huge expenditure on promotion of brand owned by the parent company at USA and on development and retention of marketing in India which has

ultimately enhanced the value of the brand owned by the AE and has resultant in retention of the marking in India held the same as international transaction. It is further observed that the assessee has made substantial amount of advertisement which is not in parity with the Revenue of the company, therefore, marginal part of such expenses were for the benefit of brand through which the AE was benefited and therefore, the AMP expenditure are international transaction. Thereafter, the TPO has applied TNM Method and worked out the adjustment on account of AMP expenses at Rs.3,49,67,677/- on substantive basis and Rs.39,06,80,791/- as per BLT and proposed the protective addition for the same. The Ld. CIT(A) has deleted the additions made on account of Transfer Pricing Adjustment on AMP expenses by following the judgment of Tribunal in assessee's own case in preceding assessment years.

22. Before us, the Ld. CIT-DR submitted that the assessee company is making expenses on advertising and media promotion, sales and distribution under the guidance and supervision of its US AE and its all the functions are controlled and managed by AEs. He referred the TP study report wherein para 3.4.2 it is observed that the company focuses its marketing/merchandising efforts on two broad areas: (i) Consumer branding and (ii) Consumer Merchandising. In Consumer branding, efforts are aided by Wrigley's global branding program aimed toward increasing worldwide product recognition. He further referred para 3.4.2.1, where it is observed that all global branding companies are led by a central team in Wrigley HQ, in a manner that ensures "all Wrigley brands will provide consumers with a consistent look and feel wherever they are purchased around the world." The Ld. CIT-DR further drew our attention to the fact that in the profits and loss account where in preceding year, as against the turnover of Rs. 385.08 Crores, AMP expenses of Rs.66.82 Crores were claimed and in the year under appeal for the Revenue of Rs. 351.62 Crs., AMP expenses were incurred at Rs. 49.61 Crs. It is further submitted by Ld. CIT-DR that by claiming such a huge amount expenditure which are ranging between 15 to 18 % of the Revenue, the assessee was in losses in preceding year as well as in current year

and this clearly established that AMP expenses were for the creation of world-wide brand owned by parent AE. With regard to application of Bright line test (BLT), ld. CIT-DR fairly admitted that the Hon'ble Jurisdictional High Court in the case of Sony Ericsson Mobile Communications India (P.) Ltd. vs. CIT [2015] 374 ITR 118 (Delhi) has held BLT as not a valid and proper method. He further submitted that no rewards were made by the AE to the assessee against such expenses to cover up the losses by the assessee. Rather the assessee has to take loans from its AE and interest was paid and if the assessee was an independent manufacturer, this would not be done. He further submits that the facts in the year under appeal are different from the facts of previous years and, therefore, the past history of the assessee where the Tribunal has decided that AMP is not international transaction is not applicable to this year. He thus prayed that AMP expenses should be held as international transaction and the adjustment made by AO/TPO on account of AMP expenses deserves to be restored.

23. Per contra, the Ld. AR of the assessee submitted that there is no change in the facts and circumstances of the year under appeal with that of the preceding assessment years. The issue of AMP has already been settled in assessee's own case in preceding assessment years from Assessment Year 2007-08 to Assessment Year 2012-13 by the Tribunal wherein it is held that AMP expenses could not be considered to be an international transaction. It is further submitted by Ld. AR that in Assessment Year 2010-11, in assessee's own case in ITA No.592/Del/2019, the Hon'ble Jurisdictional High Court has upheld the order of the Tribunal deleting the adjustment on account of AMP expenses.

24. With regard to the arguments put forth by the Ld. CIT-DR, it is submitted by the Ld. AR that there is no change in the facts and the nature of business of the assessee in the year under appeal and preceding years remained the same. HE submits except making bald statement, the ld. CIT DR has failed to demonstrate as to how the facts in the year under appeal are different from earlier years. He further submitted that in terms of Section 92F(5) of the Act, if

there is an arrangement, understanding or action in concert, whether or not such arrangement, is in action formal or in writing which shows to substantiate in a transaction between two AEs, transfer pricing provisions would apply, and the transaction would qualify as an international transaction. Further, in the instant case, there is no arrangement between assessee and its AEs for development of marketing intangibles and AMP expenses were incurred wholly and exclusively by the assessee for the purposes of increase its sales in India which has directly for the benefit of Indian business and nothing to do with the global brand of its AEs. He further placed reliance on the judgment of Hon'ble Jurisdictional High Court in the case of Maruti Suzuki India Ltd. 318 ITR 117 (Del.) and further in the case of CIT vs. Whirlpool of India Ltd. [2016] 381 ITR 154 (Delhi). He also placed reliance on the following cases on this count:-

- (i) Sony Ericsson Mobile Communications India (P.) Ltd, vs. CIT (2015) 374 ITR 118 (Delhi)
- (ii) Honda Siel Power Products Ltd. vs DCIT [2016] 237 Taxman 304 (Delhi).
- (iii) CIT vs. Whirlpool of India Ltd. (2016) 381 ITR 154 (Delhi)
- (iv) Valvoline Cummins (P.) Ltd. vs DCIT [2017] 298 CTR 349 (Delhi)
- (v) Passage to India Tour & Travels (P.) Ltd. vs. DCIT [2017] 391 ITR 207 (Delhi)
- (vi) Bausch & Lomb Eyecare (India) (P.) Ltd. vs. DCIT [2017] 391 ITR 207 (Delhi).
- (vii) Bausch & Lomb Eyecare (India) (P.) Ltd. vs. Additional Commissioner of Income-tax [2016] 381 ITR 227 (Delhi.)

25. Ld. AR finally submitted that the Ld. CIT(A) has rightly observed that AMP expenses is not an international transaction and thus deleted the additions made on account of TP adjustment on AMP expenses and requested for the confirmation of the order of ld. CIT(A).

26. After having considered the rival submissions, we find that in the instant case, the Co-ordinate Bench of the Tribunal in assessee's own case for Assessment Years 2007-08, 2008-09 and 2009-10 in ITA No.4645/Del/2011, ITA No. 6475/Del/2012 and ITA No.826/Del/2014 respectively, vide its order

dated 31.01.2017 has deleted the additions made on account of adjustment made towards AMP expenses. Further, in Assessment Year 2011-12 and 2012-13, the Co-ordinate Bench has followed the judgement in assessee's own case wherein additions made on account of AMP expenses were deleted. In the present case, the Ld. CIT(A) also followed the findings given by the Tribunal in its earlier cases and made following observations:

"5.19 Grounds No. 4 to 17 pertain to the contention of the appellant that the AO/TPO had erred in making a transfer pricing adjustment on account of AMP. The issue is covered by the order of Hon'ble ITAT, Delhi Bench in its own case for AYs 2007-08, 2008-09 and 2009-10 in ITA No. 4346/Del/2011; ITA NO. 6475/Del/2012 and ITA No. 826/Del/2014 dated 31.01.2017 and relief has been granted to the appellant by CIT(A)-14, New Delhi vide order dated 29.09.2017 in Appeal No. 49/2016-17 for AY 2012-13 where it has been held as follows: -

"Findings: -

11. The appellant has stated that Hon'ble ITAT, Delhi Bench in its own case for AYs 2007-08, 2008-09 and 2009-10 in ITA No. 4346/Del/2011; ITA NO. 6475/Del/2012 and ITA No 826/Del/2014 dated 31.01.2017 has observed as follows:-

"9. Having gone through the cited decisions of the Hon'ble Jurisdictional High court of Delhi in the case of Maruti Suzuki India Ltd. (supra), we find that an identical issue was raised before the Hon'ble High Court. The Hon'ble High Court after discussing issue in detail has come to the conclusion that AMP expenses incurred by the appellant therein, cannot be treated and categorized as an international transaction w/s 92B of the Act. Thus, the issue has been decided in favour of the assessee. The Hon'ble Court in view of the above decision further held that the question of TPO making any transfer pricing adjustment in respect of such transaction under Chapter X does not arise. The Hon'ble High Court has followed its earlier decision in the case of Sony Ericsson Mobile Communication India Pvt Isd vs. CIT (2015) 374 ITR 118 (Del) Respectfully following the ratio laid down in the cited decision of the Hon ble High Court in the cate of Maruti Suzuki India Ltd(supra), we hold that AMP expentes incurred by the uppellant cannot be treated and categorized as an international transaction w/s 928 of the Act, and in view of this finding the TPO was not justified in making any transfer pricing adjustment in respect of such transaction under Chapter X of the Act. The Ground No. 5 TO 14 is thus allowed in favour of the assessee. The Ground No. 15 is an alternative ground with this contention that the Ld AO/TPO has erred by not adhering to the principles of comparability and in using inappropriate comparables to determine the Bright Line Limit. In view of the findings on the issue raised in ground no 5 to 14, the alternative issue raised in ground no. 15 does not stand. This ground is accordingly disposed off."

11.1 The Hon'ble Tribunal relied on the order of the jurisdictional High Courts in the case of Maruti Suzuki India Ltd. (supra) where the Hon'ble High Court had concluded that AMP expenses incurred by the taxpayer could not be treated and categorized as an international transaction u/s 92B of the Act. On the basis of the above ruling the Hon'ble Tribunal had held that the issue had been decided in favour of the appellant. It was also stated that the Hon'ble Court in view of the above decision further held that the question of TPO making any transfer pricing

adjustment in respect of such transaction under Chapter X did not arise. The Hon'ble High Court had followed its earlier decision in the case of Sony Ericsson Mobile Communication India Pvt. Ltd. vs. CII (2015) 374 IFR 118 (Del).

11.2 In accordance with the principle of consistency and respectfully, following the aforementioned decision of Hon'ble ITAT, Delhi Bench for AY 2007-08 to 2009-10, the transfer pricing adjustment of Rs 524,440,465 is deleted. In view of the categorical observations of the Hon'ble Tribunal, the transfer pricing adjustment of Rs. 116,620,841 made on account of alternative approach also does not stand. The grounds of appeal filed by the appellant are accordingly disposed off."

5.20 In accordance with the principle of consistency and respectfully, following the aforementioned decision of Hon'ble ITAT, Delhi Bench for AY 2007-08 to 2009-10, the transfer pricing adjustment is deleted. In view of the categorical observations of the Hon'ble Tribunal the transfer pricing adjustment made on account of alternative approach also does not stand. The grounds of appeal filed are accordingly disposed off."

27. As there was no changes in the facts and circumstances and the nature of the business of the assessee which remained the same as were carried out in preceding assessment years, thus, by respectfully following the orders of Coordinate Bench of the Tribunal and also of the Hon'ble High Court in the case of assessee itself and further in case of Maruti Suzuki (supra), we find no error in the order of Ld. CIT(A) in holding that AMP expenditure is not an international transactions and, accordingly, we uphold the order of the Ld. CIT(A) deleting the additions on account of AMP expenditure. In the result, grounds of A to F of the Revenue are dismissed.

28. In ground of appeal No. G, the Revenue has challenged the action of Ld. CIT(A) in deleting the addition made on account of transfer pricing adjustment of interest receivables from its AEs. In this regard, the Ld. CIT-DR placed reliance on the order of TPO and submits that adjustment of Rs.12,51,244/- is made by AO/TPO after duly considering the fact of outstanding receivables and, therefore, the same deserves to be restored.

29. On the other hand, the Ld. AR of the assessee submitted that assessee did not charge any interest from its AEs as well as from non AEs. He further submitted that in assessee's own case in Assessment Year 2011-12 and 2012-12, the TPO has not made any adjustment on this account. Ld. AR thus prayed that by following the principal of consistency, no adjustment is required in the present year also.

30. After considering the arguments and perusal of the material available before us, it is observed that Ld. CIT(A) has deleted the addition by following judgments of Co-ordinate Bench in ITAT in the case of Nimbus Communications Limited vs. ACIT reported in [2012] 16 ITR 477 (ITAT Mumbai) and further following the judgment of the Hon'ble Bombay High Court in the case of Indo American Jewellery Limited ITA No.1053/Del/2012. The relevant observations of Ld. CIT(A) in para 5.1.5 to 5.12.8 are as under:

"5.15 Ground No. 3 (3.1 to 3.5) pertains to the contention of the appellant that the AO/TPO had erred in making a transfer pricing adjustment on account of interest on receivables due to the appellant from its AEs. The main contention of the appellant is that it did not charge interest from both its AEs as well as non-AEs.

5.16 The above issue have been decided by the Hon'ble Mumbai ITAT in the case of Nimbus Communications Limited vs. ACIT 2012 16 ITR 477 ITAT Mumbai where it was held as follows:

"5. A continuing debit balance, in our humble understanding, is not an international transaction per se, but is a result of the international transaction. In plain words, a continuing debit balance only reflects that the payment, even though due, has not been made by the debtor. It is not, however, necessary that a payment is to be made as soon as it becomes due. Many factors, including terms of payment and normal business practices, influence the fact of payment in respect of a commercial transaction. Unlike a loan or borrowing, it is not an independent transaction which can be viewed on standalone basis. What can be examined on the touchstone of arm's length principles is the commercial transaction itself, as a result of which the debit balance has come into existence, and the terms and conditions, including terms of payment, on which the said commercial transaction has been entered into. The payment terms are an integral part of any commercial transaction, and the transaction value takes into account the terms of payment, such as permissible credit period, as well. The residuary clause in the definition of international transaction', i.e., any other transaction having a bearing on the profits, incomes, losses or assets of such enterprises, does not apply to a continuing debit balance, on the given facts of the case, for the elementary reason that there is nothing on record to show that as a result of not realizing the debts from associated enterprises, there has been any impact on profits, incomes, losses or assets of the assessee. In view of these discussions, in our considered view, a continuing debit balance per se, in the account of the associated enterprises, does not amount to an international transaction under section 92 B in respect of which ALP adjustments can be made. The factum of payment has to be considered vis-à-vis terms of payment set out in the transaction arrangement, and not in isolation with the commercial terms on which transaction in respect of which payment is, according to the revenue authorities, delayed. In any event, even when an ALP is made in respect excessive credit period allowed under the CUP method, stated by the TPO, the comparable has to be dues recoverable from a debtor and not a borrower. It appears that the TPO has adopted interest @2.19% LIBOR on balances which exceed 30 days, but LIBOR rate is relevant only in the case of lending or borrowing of funds, and not in the case of commercial overdues. Even assuming that the continuing debit balances of associated enterprises can be treated as 'international

transactions under section 92 B, the right course of applying the CUP method, in the case of non charging of interest on overdue balances. would have been by comparing this not charging of interest with other cases in which the assessee has charged interest on overdues with independent enterprises (internal CUP) or with the cases in which other enterprises have charged interest, in respect of overdues in respect of similar business transactions, with independent enterprises (external CUP). No such exercise has been carried out in this case, nor is it shown, as is the condition precedent for bringing this continuing debit balance in the ambit of international transaction', that as a result of not realizing the debts from associated enterprises, there has been any impact on profits, incomes, losses or assets of the assessee.

6. For all these reasons set out above, as also respectfully following the decision dated 28th January 2010 of the coordinate bench in assessee's own case in the immediately preceding year, we hold that the impugned addition of Rs 12,51,175 is unsustainable in law and that the CIT(A) ought to have deleted the same. We, accordingly, direct the Assessing Officer to delete the impugned adjustment. The assessee gets the relief accordingly."

5.17 The above contention of the appellant is also supported by the order of the Bombay High Court in the case of Indo American Jewellery Limited ITA 1053/2012 where the Hon'ble Court observed as follows:-

We expressed no opinion on the above reasoning of the ITAT and keep that reasoning open for debate in appropriate case. However, in the facts of the present case, the specific finding of the ITAT is that there is complete uniformity in the act of the assessee in not charging interest from both the associated prices and the non-associated enterprises-debtors and the delay in realization of the export proceeds is the same in both the case. In these circumstances, the decision of the tribunal in deleting the notional interest on outstanding amount of export proceeds realized belatedly cannot be faulted.

5.18 The appellant has claimed that it has not charged interest from its AE or its unrelated parties. In view of the decision of the Hon'ble Bombay High Court in the case of Indo American Jewellery (supra), the AO/TPO is directed to verify the above contention of the appellant and to give relief if the appellant is able to prove has not charged interest from its unrelated parties. The ground of appeal is accordingly disposed off."

31. After considering the observations of Ld. CIT(A), we find that the Revenue has failed to controvert the findings of Ld. CIT(A) by placing on record any adverse material, thus, we are not inclined to interfere in the findings given by Ld. CIT(A) which are well reasoned. Accordingly, Ground No. G of the Revenue Appeal is dismissed.

32. In ground No. H, the Revenue has challenged the action of Ld. CIT(A) in allowing the inclusion of "Sequent Research Limited" as valid comparable. In this regard, the Ld. CIT-DR submitted that the said company was neither taken as a comparable by the assessee in the TP study report nor before the TPO and for

the first time, it was taken before the Ld. CIT(A). He further submitted that since the TPO was not given any opportunity to examine the financial of this company, therefore, the matter may be sent back to the TPO for applying to necessary filters to examine whether the said company could be included as valid comparable.

33. On the other hand, the Ld. AR submit that the company has clear all the filters which were applied by the TPO and is having centralize research facility. He further submits that company is functionally similar to the appellant and, therefore, deserves to be included in the final set of comparable.

34. After considering the arguments, we find that at page 74-75 of the CIT(A) order, the assessee has been able to demonstrate as to how this company has cleared all filters which were applied by TPO. This being so, we find no necessity of making any directions to TPO for further verification of the financial of the company and accordingly, the order of Ld. CIT(A) to include the company M/s Sequent Research Limited as a valid comparable is uphold. Accordingly, Ground No. H of the Revenue Appeal is dismissed.

35. In the result, the appeal of the assessee in ITA No. 667/Del/2019 is allowed and of the revenue in ITA No. 702/Del/2019 is dismissed.

36. Now coming to the revenue's appeal for AY 2014-15 in ITA No. 1293/Del/2022, wherein the revenue has challenged the order of ld. CIT(A) in deleting the adjustments made on account of AMP expense treating the same as international transactions and further deleting the adjustments made on account of Interest on receivables.

37. Before us, both the parties have fairly admitted that facts of the present appeal are identical to the facts in ITA No. 667 & 702/Del/2019 for Assessment Year 2013-14. Therefore, by following the observations made in ITA No.667 & 702/Del/2019 above for AY 2013-14, which are applied *mutatis mutandis*, appeal of the revenue for AY 2014-15 in ITA No. 1293/Del/2022 is dismissed.

38. In the result, the appeal of the revenue in ITA No. 1293 /Del/2022 is dismissed.

39. In revenue's appeal for AY 2015-16 in ITA No. 1294/Del/2022, the revenue has challenged the order of Id. CIT(A) in deleting the adjustments made on count of AMP expense treating the same as international transactions and further deleting the adjustments made on account of Interest on receivables.

40. Before us, both the parties have fairly admitted that the facts in this year are identical to the facts in Asst. Year 2013-14 in in ITA No. 667 & 702/Del/2019. Therefore, by following the observations made in ITA No.667 & 702/Del/2019 herein above for AY 2013-14, which are applied *mutatis mutandis*, appeal of the revenue for AY 2-15-16 is dismissed.

41. Now we take up the assessee's appeal for Assessment Year 2015-16 in ITA No.952/Del/2022 wherein the assessee has taken the following grounds of appeal:-

"1. That on the facts and circumstances of the case and in law, the order passed by Hon'ble Commissioner of Income Tax (Appeals) -44, Delhi [Hon'ble CIT(A)] under section 250 of the Act, to the extent confirming the additions made to the returned income by the Assistant Commissioner of Income Tax -27(2), Delhi ('Ld. AO') and Assistant Commissioner of Income Tax, Transfer Pricing-3(3)(2), Delhi ('Ld. TPO'), is bad in law.

2. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the addition of INR 2,87,01,425 with respect to the international transaction of payment of interest on external commercial borrowings ('ECB'). In doing so, the Hon'ble CIT(A) has grossly erred in:

2.1. incorrectly holding that London Inter-Bank Offered Rate ('LIBOR') rate should be used over State Bank of India ('SBI') Prime Lending Rate ('PLR') for benchmarking the impugned international transaction;

2.2. disregarding the business/commercial reality that the Appellant has been incurring heavy losses year on year due to which it could only avail loan from its AEs and not from external third parties and assigning an incorrect credit rating to the Appellant without any basis; and

2.3. incorrectly imputing 6 months LIBOR + 300 basis points as the CUP for benchmarking the said international transaction without providing any comparable data.

3. That the above grounds of appeal are independent and without prejudice to each other.

4. That the Appellant craves leave to add, alter, amend, modify, supplement or withdraw any of grounds of appeal stated hereinabove either before or at the time of hearing of this appeal.”

42. The appeal of the assessee is mainly with regard to the adjustment of Rs.2,87,01,425/- made in respect of international transaction of payment of interest on external commercial borrowings ('ECB') whereby the TPO/AO has applied London Inter-Bank Offered Rate ("LIBOR") as against State Bank of India ('SBI') Prime Lending Rate ('PLR') for benchmarking the said international transactions.

43. Before us, the Ld. AR of the assessee submitted that during the year assessee has paid interest on the 'ECB' taken in earlier years in terms of the loan agreement executed on different dates. The assessee selected the other method as most appropriate method to work out the Arms Length Price ('ALP') of such borrowings wherein the assessee has considered the market rate of interest on Indian Loans i.e. the 'PLR' prevailing as on the date of agreement and since the interest rate paid by assessee was lower than the PLR prevailing in India as on the date of agreement, no adjustment is made towards the payment of interest on ECB's to the AE. He further submitted that the TPO has applied LIBOR plus 600 basis for bench marking these transactions.

44. The Ld. AR submitted that the loans were consumed in India and the assessee is India based company, therefore, arm's length price should be determined using the Indian PLR. He further submitted that the LIBOR as the arm's length rate is appropriate only in the case of outbound loans and not for inbound loans. Since, the assessee has availed ECBs from its AE i.e. WWJC which is an inbound loan. He further submitted that the assessee company is unable to raise borrowings from 3rd Party and has availed loans from its group companies for the smooth running of day-to-day business operations and, therefore, interest paid out @ 5 to 6.5% on such ECBs is justified and deserves to be accepted without making any adjustment. In the alternate the Ld. AR submitted that Ld. TPO assumed an arbitrary credit rating of "BBB-, BBB,

BBB+” without taking consideration of the facts and thereby, arbitrarily imputed 6 months LIBOR + 600 basis points. He submits that in the instant case credit rating is not available and, therefore, the action of TPO in applying credit rate to ‘BBB-, BBB, BBB+’ is without any basis and thus, he prayed that necessary directions be given for obtaining the credit rating from the prescribed agency for this purpose.

45. On the other hand, the Ld. CIT-DR supports the order of the lower authorities and submit that since, the assessee has taken borrowings from its AE, therefore, LIBOR is rightly applied. Since, assessee has not furnished the details of credit rating of AEs, therefore, the TPO has rightly taken the six month LOBOR from 300 basis point and requested for the confirmation of the said order.

46. After considering the arguments put forth by both the parties, we find that in the instant case, the assessee has obtained ECB from its AE i.e. ‘WWJC’ to meet its capital/project expenditures requirements and paid interest rate (as provided below) per 360 days.

Date of agreement	Loan Amount (in USD)	Fixed rate per 360 days
January 04, 2007	5,000,000	6.50%
August, 08, 2008	5,000,000	5.00%
August 18, 2009	10,000,000	5.00%
August 21, 2013	5,000,000**	5.25%

47. The assessee has selected other method as most appropriate method for working the arm’s length price on the said payment on interest. It has taken the SBI PLR as most appropriate which was rejected by TPO by observing that assessee has taken loan in US \$ and had thus applied six months LIBOR plus 600 basis point as there was no credit rating available with the assessee for its AEs. We find force in the arguments of the Ld. AR that the AO has applied the credit rating of ‘BBB-, BBB, BBB+’ without any basis, therefore, we remanded back this issue to the file of the AO with a direction that the credit rating be

obtained for this purposes. Here it is relevant to mention that we are in agreement with TPO that in the instant case, LIBOR is the proper bench marking for the transactions. With these directions, all the grounds of appeal are allowed for statistical purposes.

48. The appeal of the assessee in ITA No. 952/Del/2022 for AY 2-15-16 is partly allowed.

49. In assessee's appeal for Assessment Year 2016-17 in ITA No.953/Del/2022, the assessee has taken following grounds of appeal.

- “1. *That on the facts and circumstances of the case and in law, the order passed by Hon'ble Commissioner of Income Tax (Appeals) -44, Delhi [Hon'ble CIT(A)] under section 250 of the Act, to the extent confirming the additions made to the returned income by the Assistant Commissioner of Income Tax - 27(2), Delhi (Ld. AO) and Assistant Commissioner of Income Tax, Transfer Pricing - 3(3)(2) (Ld. TPO), Delhi, is bad in law.*
2. *On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the addition of INR 1,99,53,199 with respect to the international transaction of purchase of raw materials and intermediate goods. In doing so, the Hon'ble CIT(A) has grossly erred in:*
 - 2.1. *not appreciating the correct functional analysis of the Appellant vis-a-vis foreign associated enterprise ('AE') and disregarding the benchmarking methodology of the Appellant by drawing an erroneous conclusion that the Appellant should be chosen as the tested party for benchmarking the said international transaction;*
 - 2.2. *disregarding the fact that when the transaction of sale of finished goods by the Appellant to its AEs have been considered at arm's length, then the portion of purchase of raw materials consumed for the production of the goods sold to its AEs would also be at arm's length; and*
 - 2.3. *without prejudice to the above, the Hon'ble CIT(A) erred in disregarding the Appellant's contention that the comparison at gross margin for benchmarking would be appropriate.*
3. *On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the addition of INR 1,30,24,487 with respect to the international transaction of payment of interest on external commercial borrowings ('ECB'). In doing so, the Hon'ble CIT(A) has grossly erred in:*
 - 3.1. *incorrectly holding that London Inter-Bank Offered Rate ('LIBOR') rate should be used over State Bank of India ('SBI') Prime Lending Rate ('PLR') for benchmarking the impugned international transaction;*
 - 3.2. *disregarding the business/ commercial reality that the Appellant has been incurring heavy losses year on year due to which it could only avail loan from its AEs and not from external third parties and assigning an incorrect credit rating to the Appellant without any basis; and*
 - 3.3. *incorrectly imputing 6 months LIBOR + 300 basis points as the CUP for benchmarking the said international transaction without providing any comparable data.*

4. *That the above grounds of appeal are independent and without prejudice to each other.*

5. *That the Appellant craves leave to add, alter, amend, modify, supplement or withdraw any of grounds of appeal stated hereinabove either before or at the time of hearing of this appeal.”*

50. Ground No. 1 is general in nature.

51. Ground No.2 and sub-ground 2.1 to 2.3 are in relation to the confirmation of addition of Rs.1,99,53,199/- with respect to the TP adjustment on international transaction of purchase of raw materials and intermediate goods.

52. The appellant in the TP study had reported that the AEs, in relation to the transaction of supply of raw materials and finished goods, act in the capacity of a routine manufacturer working on a cost-plus basis. The AEs are therefore, simpler of the transacting entities. The overseas AEs, in their capacity as such, neither perform nor bear the economic risk of significant marketing, advertising, or distribution functions vis-à-vis the manufacture and sale of goods to Wrigley India. Consequently, the overseas AEs have been characterized as routine manufacturers bearing normal business risk with respect to the International transaction of sale of products to Wrigley India. It was stated that the appellant operates as a manufacturer, undertaking operational functions required to manufacture and package products for sale in the territory and other Wrigley Marketers. This includes daily factory operations such as manufacturing, wrapping, engineering maintenance, and quality assurance. The appellant also procures raw materials from suppliers other than AEs. The appellant also utilizes the Manufacturing Process Intangibles to improve their operational efficiency. The manufactured goods are either sold in the Indian market by the appellant itself or are sold to the AEs for sale in overseas jurisdictions. Wrigley India is the key decision maker in its market and assumes associated risks. In its capacity of a Wrigley Marketer, Wrigley India is responsible for making pricing decisions for its local markets i.e. Indian market. Thus, it was concluded that the overseas AEs (in its capacity as routine manufacturers only for the raw materials) were the least complex entity and were chosen as the tested party for the transaction

pertaining to purchase of goods and TNMM was used as the most appropriate method with OP/TC as the relevant PLI.

53. The TPO rejected the product taken by the assessee and held that the assessee is tested party as the assessee is engaged in the least complex operations vis-à-vis its AEs with respect to the international transaction of purchase of raw material. The TPO has also deducted various comparative analysis by using for bench marking transaction on the basis of the said comparables the TPO made an adjustment of Rs.1,99,53,199/- to the income of the appellant.

54. Before us, the Ld. AR of the assessee submitted that the Appellant being the key decision-maker for sales and distribution activities in its market, assumes the market risk associated with the same in the local markets. Hence it can be said that the Appellant, in its capacity of a Wrigley Marketer, is responsible for making pricing decisions for its local market i.e. the Indian market. It is further submitted that the AE supplies products to the Appellant based on the procurement orders placed by the Appellant and the AE is responsible for the quality of the goods exported to the Appellant. For the raw material imported by the Appellant from its AE, primarily gum base, the AEs undertakes the following activities:

- a) Procurement of raw materials to undertake the manufacturing activity:
- b) Undertaking the various manufacturing processes and production scheduling in accordance with the purchase order raised by the Appellant; and
- e) Monitoring the operations to ensure that the quality of goods produced is in accordance with Group's standards.

55. With respect to the intercompany product transactions, although Wrigley Manufacturers license the rights to utilize the Manufacturing Process Intangibles from Wrigley US to enhance their operational efficiency, in their capacity as such, they neither perform nor bear the economic risk of significant product

development, marketing, advertising, or distribution functions. As such, the Wrigley Manufacturers can be characterized as routine manufacturers. Ld. AR further submits that the Appellant undertakes all significant functions and bears the associated risks with respect to the captioned transaction in the local territory as a manufacturer and an entrepreneurial marketer. Thus, overseas AEs (in its capacity as routine manufacturers only for the raw materials) are the least complex entity and therefore were chosen as the tested party for the transaction pertaining to purchase of goods and TNMM was used as the most appropriate method with operating profit/operating cost ('OP/TC') as the relevant profit level indicator (PLI').

56. Ld. AR also submits that in the preceding assessment years, the assessee has undertaken a similar international transactions and conducted similar economic analysis and no adjustment was made by the TPO in any of the year. This is the first year when the TPO has made the adjustment on this score. Since, the identical issues involved as principle of consistency no adjustment should be made for this year.

57. With regard to the comparable, the Ld. AR submits that in the case of international Bakery Products Ltd. as included by the TPO is not proper comparable in terms of functions performed, assets employed and risk assumed. He thus submits that the said company deserves to be excluded from the comparables.

58. On the other hand, the Ld. CIT-DR supports the orders of the lower authorities and submits that the Ld. CIT(A) has considered all the aspects and therefore, the same deserves to be upheld.

59. After considering the arguments put forth by both the parties. It is seen that in preceding assessment years under similar circumstances, the assessee by making same analysis has made no adjustment on this count and the circumstances in previous years are in parity with the year under appeal which fact has not been controverted by any of the parties, therefore, as a matter of

principle of consistency, the TPO should not make any adjustment in this year also on this issue.

60. With regard to the exclusion of International Bakery Product, it is seen that assessee is engaged in the business of manufacturing and selling of various products in local as well as in overseas markets whereas the International Bakery Products Ltd. is mainly making the Biscuits for its holding company. From the Balance sheet, it is seen that the company is having income from services i.e., conversion income whereas the appellant has receipts from sale of its products. The Ld. AR also drew our attention to the fact that the margin calculated by the TPO with respect to the comparable is not correct and the correct margin as per the assessee are as under:

S. No.	Name of the Company	OP/QR as per the Ld. TPO	OP/QR as per the Appellant
1.	<i>Nimbus Foods Inds. Ltd.</i>	3.39%	4.45%
2.	<i>Parle Biscuits Pvt. Ltd.</i>	4.29%	5.25%
3.	<i>Ravi Foods Pvt. Ltd.</i>	5.88%	5.78%
4.	<i>International Bakery Products Ltd.</i>	6.37%	-
5.	<i>Surya Foods & Agro Ltd.</i>	7.59%	5.67%
6.	<i>Mrs. Bectors Food Specialties Ltd.</i>	8.46%	8.19%
7.	<i>Patanajali Biscuits Pvt. Ltd.</i>	11.65%	10.67%
8.	<i>Surya Processed Foods Pvt. Ltd.</i>	24.19%	22.79%
	Average	8.89%	8.99%
	35th Percentile	5.88%	5.67%
	Median	6.98%	5.78%
	65th Percentile	8.46%	8.19%

61. It is further seen that if the gross margin is considered for making the comparison, the assessee gross margin is 54.59% whereas the median of the weighted average gross margin earned by the comparable companies proposed by the Ld. TPO after excluding International Bakery Products Limited is 35.28%, therefore, even otherwise the assessee has declared healthy gross margin and therefore, the transaction of raw material are at arm's length price. In view of above discussion, we delete the adjustment of Rs.199,53,199/- made on account of Transfer Pricing Adjustment on purchase of raw material. The grounds of appeal No.2 and 2.1 to 2.3 are allowed.

62. Ground of Appeal No.3 to 3.3 are in relation to the addition of Rs.1,30,24,487/- made with respect to International Transaction of payment of interest on 'ECB'.

63. This issue has been dealt with by us in assessee's appeal for Assessment Year 2015-16 in ITA No. 952/Del/2022 wherein we direct the AO to get the credit rating of the AEs of the assessee. Thus, following the said directions, the grounds of appeal No. 3 to 3.3 are partly allowed for statistical purposes.

64. As a result, the appeal of the assessee for AY 2016-17 in ITA NO. 953/Del/2022 is partly allowed.

65. In revenue's appeal for AY 2016-17 in ITA No. 1295/Del/2022, the revenue has challenged the order of Id. CIT(A) in deleting the adjustments made on account of AMP expense treating the same as international transactions and further deleting the adjustments made on account of Interest on receivables.

66. Before us, both the parties have fairly admitted that the facts in this year are identical to the facts in Asst. Year 2013-14 in in ITA No. 667 & 702/Del/2019. Therefore, by following the observations made in ITA No.667 & 702/Del/2019 herein above for AY 2013-14, which are applied *mutatis mutandis*, appeal of the revenue for AY 2016-17 is dismissed.

67. In the result, the appeal of the Assessee in ITA No. 667/Del/2019 for AY 2013-14 is allowed. Assessee's appeal in ITA No. 952/Del/2022 for AY 2015-16 and ITA No. 953/Del/2022 for AY 2-16-17 are partly allowed. Appeals of Revenue in ITA Nos. 702/Del/2019 for AY 2013-14, and ITA nos. 1293 to 1295/Del/2022 for AY 2014-15 to 2-16-17 are dismissed.

Order pronounced in the open Court on 29/05/2025

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 29/05/2025
PK/Sr. Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI